

Minutes of the Board of Adjustment meeting held on Monday, May 11, 2009, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Wendell Coombs, Chair
Joyce McStotts, Vice-Chair
Rosi Haidenthaller
Jonathan Russell
Tim Tingey, Community & Economic Development Director
Chad Wilkinson, Community Development Planner
Citizens

Excused: Connie Howard

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

APPROVAL OF MINUTES

Wendell Coombs asked for additions or corrections to the minutes of April 13, 2009. Joyce McStotts made a motion to approve the minutes as amended. Rosi Haidenthaller seconded the motion.

Voice vote was taken. Minutes approved 4-0.

Mr. Coombs explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and that financial issues are not considered a hardship.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1377 – MANAGEMENT SERVICES – 635 West 5300 South

Mark Kramer was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for a variance to setback standards for a monument sign in a commercial zone for the property addressed 635 West 5300 South. Municipal Code Section 17.48.240 A.2. requires that a monument sign be setback a minimum of 15 feet from any driveway or traffic access and that the sign not impair traffic visibility. The applicant has requested a variance to the standards requiring that monument signs be setback a minimum of 15 feet from a driveway or traffic access. The applicant proposes a setback of 3 feet from the driveway. The sign is set back approximately 15 feet from the property line on Allendale Drive. The property is zoned C-N-C. The sign is setback far enough from the entrance onto Allendale Drive to provide for adequate vision clearance for vehicles entering and exiting the site. The location allowed by the zoning ordinance could potentially create problems arising from vehicles overhanging the landscape area hitting the sign and damaging either the sign or the vehicles. The site layout for this particular property includes a long landscape island that extends within the site, effectively lengthening the area considered part of the driveway. The parking layout created by this extended landscape area is actually preferable as it provides for additional queue length for cars exiting the site. With the proposed location, vehicles can pull forward past the sign and have an unobstructed view south down Allendale Drive. The added visibility will aid in reducing impacts to vehicles making left turns into and out of the site. Based on review and analysis of the application material, subject site

and surrounding area, and applicable Murray Municipal Code sections, the Community & Economic Development staff finds that the proposal meets the standards for a variance.

Mark Kramer, Fast Signs at 6570 South State Street, indicated he is representing the business for this proposal. Mr. Kramer stated that he agrees with the staff recommendation and the proposed location makes more sense and provides better visibility. He stated if the sign were located per code requirements, it would also require the reduction of one parking stall.

Jonathan Russell commented that he feels the proposed location is a good location for this property.

No comments were made by the public.

Rosi Haidenthaller made a motion to grant the variance as requested based on the findings of fact, on the information and testimony given. Seconded by Jonathan Russell.

Call vote recorded by Chad Wilkinson.

<u>A</u>	Ms. Haidenthaller
<u>A</u>	Ms. McStotts
<u>A</u>	Mr. Russell
<u>A</u>	Mr. Coombs

Motion passed 4-0.

Rosi Haidenthaller made a motion to adopt the Findings of Fact for Management Services, Case #1377 as written. Seconded by Joyce McStotts.

Call vote recorded by Chad Wilkinson.

<u>A</u>	Ms. Haidenthaller
<u>A</u>	Ms. McStotts
<u>A</u>	Mr. Russell
<u>A</u>	Mr. Coombs

Motion passed 4-0.

CASE #1378 – ZACARIAS MURIEL – 770 East Vine Street

Zacarias Muriel was present to represent this request. Tim Tingey reviewed the request of an appeal of the Community & Economic Development Director's decision that the property located at 770 East Vine Street is a duplex or two dwelling use and that any nonconforming status that the property may have had was lost in 2003 and that a proposed use of a third dwelling at this site is not allowed per the current zoning ordinance and is not allowed through a Conditional Use Permit. Section 17.100.020 outlines the uses permitted in the residential R-1-8 zone. Triplexes or three dwelling units on one property are not allowed in this zoning area. Section 17.52.070 indicates that a building or structure occupied by a nonconforming use which becomes vacant and unoccupied for a continuous period of one-year excluding dwelling units shall not be occupied except by a use that conforms to the use regulations of the zoning district. Mr. Tingey reviewed the following details for the determination.

- On November 27, 2000 Dennis Hamblin, who at the time was the Community Development Director, made the determination that the property contained three dwelling units and determined that they were legal non-conforming.
- On May 2, 2003 a fire occurred in the detached unit on the property and a permit was issued to repair the roof. However, a permit was not obtained to repair or rebuild the dwelling unit and the structure remained vacant for the past six years.
- The property is located in a residential R-1-8 zoning district and Murray City Code Chapter 17.1090, allows single family dwellings and other additional uses, but does not allow a duplex, triplex or secondary dwelling unit. Therefore, any use other than what is identified in this zoning classification is not allowed in this area (unless it is legal nonconforming and has not lost its nonconforming status). Section 17.16.050C authorizes the Board of Adjustment to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the administrative official in the enforcement of this title or any ordinance adopted hereto.
- The applicant has not provided any additional documentation that the use is still nonconforming. The Community and Economic Development Department staff have had several meetings with the applicant and explained that without additional information, it is unlikely that the Board of Adjustment will overturn the decision. The applicant understood that without additional information the appeal would be difficult to get overturned. However, the applicant has communicated that he would like an opportunity to discuss this before the Board of Adjustment.

Mr. Tingey summarized that based upon the above referenced information, the presentation and materials submitted, the Community & Economic Development staff recommends denial of the appeal.

Joyce Mc Stotts asked about the fire occurring in 2003 and if the nonconforming status would have been lost in 2004 (a period of one year afterwards). Mr. Tingey responded that the fire occurred in May of 2003 and at that time, the ordinance stipulated a six month time period for nonconforming status and was then lost at the end of 2003.

Zacarias Muriel, 1819 East 2100 South, Salt Lake City, stated he purchased this property approximately 16 months ago and he has been attempting to improve the property. He stated the gas line and electricity have serviced the back structure for sometime and he would like to remodel the detached structure and use it as a rental unit rather than remain vacant. He indicated that there is adequate parking for the units. He stated that he purchased the property with the intent of renting out all three units and that the unit needs to be repaired so as to be livable. He stated that he purchased the property from a friend and it was in bad repair.

Wendell Coombs explained that this property was originally nonconforming and the area is zoned for single family residences. When this property was annexed into Murray City it was nonconforming and in order to maintain the status of the three units, the units must have been occupied continuously. When the fire occurred, the property owner had six months time period to repair the property and occupy the property, otherwise the nonconforming status would be lost. At the end of 2003, the nonconforming status was lost due to the property not having been occupied for over six months. He stated unless the applicant could prove that the property was occupied during that time, the nonconforming status is lost.

Rosi Haidenthaller stated that the building permit records indicate no building permit was issued for the repairs in 2003. He asked Mr. Muriel if he has any records of repairs having been done during 2003, or were there persons living in the structure during that

time period. Mr. Muriel responded that the property has been vacant, but it is obvious that someone was living in the unit.

Rosi Haidenthaller asked Mr. Muriel if he had additional information such as copies of rental checks from 2003 or 2004, etc. indicating the property having been rented even if a building permit was not obtained. She stated that the burden of proof is upon the applicant. She explained that a legal nonconforming use must be continued, but when that nonconforming use stops for a period of time, that nonconforming status is then lost.

Mr. Muriel stated he is willing to research the possibility of obtaining other information.

Joyce McStotts explained that even though the bathroom, power and electricity have existed for many years for the third unit and existed before the fire, that Mr. Muriel must prove the use has continued since the fire in 2003.

Zac Muriel asked if he could have the opportunity to research the information and produce such documentation as necessary. He stated he is a new owner of the property. Mr. Russell responded that the Board understands that Mr. Muriel has had multiple meetings with the city staff in this regard and the process was explained to him extensively and Mr. Muriel should have prepared the information prior to this meeting.

Wendell Coombs asked the square footage of the property. Mr. Muriel responded the unit is approximately 1,500 sq.ft. and the front unit has two units which are operable.

Wendell Coombs commented that the property could potentially be subdivided into two lots with the back structure being separated off as a single family residence. He stated that the Board would need additional information in order to overturn the previous decision of the Community Development Director for the nonconforming status having been lost. He stated there has been no new evidence produced to indicate otherwise.

No comments were made by the public.

Joyce McStotts made a motion to deny the appeal of Zacarias Muriel since there are no new facts or findings brought forward and the original decision of the Community & Economic Development Director stands. Seconded by Rosi Haidenthaller.

Call vote recorded by Chad Wilkinson.

<u>A</u>	Ms. Haidenthaller
<u>A</u>	Ms. McStotts
<u>A</u>	Mr. Russell
<u>A</u>	Mr. Coombs

Motion passed 4-0.

Wendell Coombs stated that the Board has upheld the decision of the Community & Economic Development Director and that the property lost its nonconforming status for a third dwelling in 2003.

Joyce McStotts made a motion to adopt the Findings of Fact for Zacarias Muriel, Case #1378 as written. Seconded by Rosi Haidenthaller.

Call vote recorded by Chad Wilkinson.

Board of Adjustment Meeting

May 11, 2009

Page 5

A Ms. Haidenthaller
A Ms. McStotts
A Mr. Russell
A Mr. Coombs

Motion passed 4-0.

OTHER BUSINESS

Rosi Haidenthaller indicated that she will absent from the meeting for June 8, 2009.

Meeting adjourned.

Chad Wilkinson, AICP
Community Development Planner